IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8706 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MH MILLS & INDUSTRIES LTD

Versus

SALES TAX OFFICER (1)

Appearance:

1. Special Civil Application No. 8706 of 2003

NANAVATI ASSOCIATES for Petitioner No. 1

MR KP RAWAL, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/08/2004

ORAL JUDGEMENT

#. The petitioner, by way of this petition, has challenged the action of the respondent initiating the

proceedings under Sections 152 and 200 of the Bombay Land Revenue Code and under Section 48 of the Gujarat Sales Tax Act.

#. While issuing rule, this Court has passed the following order on 17.03.2004 :

"Heard the learned advocates.
Rule returnable on 4th August, 2004. Learned AGP Mr.Sood waives service of rule. Pending this petition, there shall be interim stay in terms of paragraph 20(B)(a) on condition that the petitioner shall pay all its sales tax dues regularly which have accrued since 8th May, 2002."

#. It is stated that current dues are paid regularly and that the proceedings are pending before the BIFR.

#. Mr.Chudgar for the petitioner has relied upon the decision of this Court in the case of Core Healthcare Ltd. V/s State of Gujarat reported in 2004 Company Cases Page 77. This Court (Coram : M.S.Shah and A.M.Kapadia, JJ) has observed on page 98 as under :

"These petitions are pending before this Court since July 1,2,2003, when the petitioner-company's reference was not even registered by the BIFR or the Appellate Authority under the SICA. In the affidavits dated October 1, 2003, on behalf of the respondent-State Government, an assertion is made that the State Government is entitled to recover at least the current dues, notwithstanding the provisions of Section 22 of the SICA, because the petitioner continues to collect the sales tax from the purchasers. This stand of the State Government was also reiterated at the hearing before the court on October 15, 203, when the court continued the interim relief against coercive recovery because the petitions were already admitted and interim relief was already granted on August 13, 2003. Hence, it would not be unfair or inequitable to the petitioner-company to hold that the State Government is entitled to recover sales tax dues from the petitioner hereafter, i.e., from tomorrow onwards. It is clarified that this is with reference to the sales tax liability of the petitioner accruing from April 1, 2004, onwards and that the

respondent-State Government shall not, without the consent of the BIFR, recover any past sales tax dues of the petitioner for the period till today (March 31, 2004), and that the respondent-State Government shall also not make coercive recovery of any amount by way of interest accruing in future on the past sales tax dues of the petitioner payable till March 31, 2004.

As regards the prayer to restrain the State Government from initiating criminal proceedings against the company and its directors for non-payment of sales tax dues, while such blanket relief cannot be granted in view of the decision of this Court in Vijay Mills Co.Ltd.(1990)68 Comp Cas 597, it will be appropriate for the State Government to consider this issue in proper perspective after finding out whether the petitioner-company pays current sales tax from April 1, 2004 onwards.

In view of the above discussion, the petitions are partly allowed. The respondent-State Government is restrained from making any coercive recovery of sales tax dues from the petitioner for the period till today, i.e., March 31, 2004, without prior consent of the BIFR. However, it will henceforth be open to the State Government to take appropriate action in accordance with law and in light of the principles laid down in this judgment in respect of the sales tax amounts being collected by the petitioner-company from April 1, 2004, onwards.

The petitioner shall also inform the BIFR and the operating agency, if any, about the directions contained in this judgment."

#. In this view of the matter, the issue involved in this petition is squarely covered by the decision referred to hereinabove. The petitioner is directed to continue to pay its sales tax due and that the past dues will be governed by the order of the appellate authority BIFR and till then the respondent will not execute the notice in question. However, it will be open to the respondent to initiate the proceedings after the proceedings before the BIFR or appellate authority is over. Till then, the respondent is restrained from recovering past dues.

#. Subject to the above observation, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.S.Jhaveri, J)

(pathan)